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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,771	07/30/2007	Uwe Schefthaler	LIP089	4208
32047	7590	03/26/2010	EXAMINER	
GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC 55 SOUTH COMMERCIAL STREET MANCHESTER, NH 03101			DEMILLE, DANTON D	
ART UNIT	PAPER NUMBER			
	3771			
MAIL DATE	DELIVERY MODE			
03/26/2010	PAPER			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/599,771	SCHEFTHALER, UWE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Danton DeMille	3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 and 10-12 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7 and 10-12 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>8/15/07</u> .	6) <input type="checkbox"/> Other: ____ .

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second shaft, projecting arm and drive as recited in claim 1 and vibration device being inserted in the massage body 7 recited in claim 7 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

**Claims 1-7, 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

It is not clear what the scope of claim 1 is. Claim 1 recites a first and second shaft and a projecting arm in addition to a holding arm and a massage arm. the drawings only show the massage arm 1 and a holding arm 4. Claim 1 recites a massage unit that “can be mounted in a massage chair or another item of furniture used fro sitting or lying, where a first and second shaft are comprised”. Therefore it has been assumed that the first and second shaft are part of the furniture which is not part of the claimed combination. The claim then continues “where the massage arm (1) displays a holding arm (4), connected in articulated fashion to a first shaft”. Since the first shaft is not part of the claimed combination the limitation of the holding arm (4) being connected in articulated fashion to a first shaft as not part of the claimed combination.

After reciting that the holding arm is connected to a first shaft claim 1 continues with “on the free end of which the massage element (2) is located in articulated fashion”. It is not clear which element is being referred to by the word “which”. Is it the massage element (2) or the first shaft which has the massage element (2) located in articulated fashion?

Claim 1 then continues with “a projecting arm, connectable in articulated fashion to a second shaft, one end of which acts on the holding arm (4)”. Since the “projecting arm” is not shown in the drawings, it will be assumed that is not part of the claimed combination and since the second shaft is also not part of the claimed combination, no weight can be given this limitation.

Claim 1 resumes with “where the shafts can be moved in the massage unit by means of a drive in order to produce a first vibrating movement in a first frequency range”. Since the “drive” is not shown and assumed part of the furniture, it too is not part of the claimed combination and along with the shafts are part of claim language this is not part of the claimed combination.

In claim 12, it is not clear which direction is crosswise. Crosswise to what? To any extent the claims are understood and appear to be supported by a clear and complete disclosure, the following appears to be appropriate.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-7, 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Zicherman (US 2003/0073940).**

Zicherman teaches a massage arm 123, 124, figure 15 with a massage element 123b, 124b that is capable of being mounted to an item of furniture. The massage element 123b, 124b displays at least one contact surface 125, 126 and a vibration device therein located on the massage element 123b, 124b, for generating a second vibration movement superimposed on the first vibration movement should the chair include a vibrating element.

Regarding claims 2-4, Zicherman teaches frequencies up to 24 Hz which appears to comprehend the claimed range.

Regarding claims 6 and 7, Zicherman teaches embodiments where the vibration device is located next to the massage body, for example, figure 13, or in the massage body, for example, figure 4.

Regarding claim 10, Zicherman teaches an embodiment where the vibration device displays an electric motor and unbalanced weight, for example, figure 7.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zicherman.**

Zicherman appears silent with regard to exactly what kind of mechanism is used to hinge the massage elements 123b, 124b to the massage arms 123, 124. Ball and socket arrangements and pivoting axes are well known and an obvious means to hinge massage elements to massage arms and would have been an obvious provision in Zicherman.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

27 March 2010

*/Danton DeMille/*  
Danton DeMille  
Primary Examiner  
Art Unit 3771